

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROBERT DEVELL KINCADE,

Defendant.

Case No. 2:15-cr-00071-JAD-GWF

ORDER

This matter is before the Court on Defendant's Motion for Substitution of Counsel (ECF No. 236) and Motion to Withdraw (ECF No. 237), filed on December 27, 2016.

Defendant wishes to substitute his current counsel, Todd Leventhal, because "[t]here is a divide between [Defendant] and Todd Leventhal that cannot be bridged." *Motion for Substitution* (ECF No. 236), pg 6. However, this issue is now moot. On December 28, 2016, the Court granted Mr. Leventhal's Motion to Withdraw (ECF No. 230) and a new attorney appointment hearing is set for January 5, 2017 at 9:00 a.m.

Defendant also seeks to withdraw the Motion to Dismiss Count 1 of the Second Superseding Indictment (ECF No. 169) filed by Mr. Leventhal on October 27, 2016. Defendant argues that Mr. Leventhal failed to properly address issues relevant to the motion to dismiss, thereby denying Defendant "a proper motion." *Motion to Withdraw* (ECF No. 236), pg. 10. Again, Defendant's motion has now been rendered moot. On December 29, 2016, the undersigned issued a Report and Recommendation (ECF No. 238) that thoroughly addressed the issues presented in Defendant's Motion to Dismiss and subsequently recommended that the motion be denied. *See* ECF No. 238. Therefore, the Court does not find that Defendant should be allowed to revisit these issues once he has new counsel.

1 Defendant's motion to withdraw additionally requests that the Court permit Defendant's
2 prior counsel— and current counsel on Counts 2-5 of the Second Superseding Indictment— to
3 inquire into the 2011 case “for the purposes of finding out exactly when the sweatpants were
4 submitted to the lab for testing and specifically did FBI agents Mollica and Schlumpf collect a
5 reference sample in December of 2015 for [his] DNA found on the sweatpants.” *Motion to*
6 *Withdraw* (ECF No. 237), pg. 11. The Court will not grant this request. Ms. Bliss was found to
7 have a conflict of interest with regard to Count 1 of the Second Superseding Indictment. *See Order*
8 (ECF No. 116). Therefore, she is not allowed to play any role in the defense of Count 1.
9 Accordingly,

10 **IT IS HEREBY ORDERED** that Defendant's Motion for Substitution of Counsel (ECF
11 No. 236) and Motion to Withdraw Motions (ECF No. 237) are **denied** as moot.

12 DATED this 3rd day of January, 2017.

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15 GEORGE FOLEY, JR.
16 United States Magistrate Judge
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